BLANK

PAGE

FILE COPY

Office - Supreme Court, U. S
FILED
NOV 1 1937
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 57.

LANASA FRUIT STEAMSHIP AND IMPORTING COMPANY, INC., PETITIONER,

vs.

UNIVERSAL INSURANCE COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF ON BEHALF OF PETITIONERS.

GEORGE FORBES,
HENRY L. WORTCHE,
Attorneys for Petitioner.

The Daily Record Co. Print, Baltimore.

BLANK

PAGE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 57.

LANASA FRUIT STEAMSHIP AND IMPORTING COMPANY, INC., PETITIONER,

vs.

UNIVERSAL INSURANCE COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF ON BEHALF OF PETITIONERS.

The Petitioner having received the Printed Record from the Clerk on October 29th, 1937, and having fully covered its contentions in support of a reversal of the judgments of the United States Circuit Court of Appeals for the Fourth Circuit and the District Court of the United States for the District of Maryland, in its Brief in support of its Petition for Writ of Certiorari, and its Reply to Respondent's Brief in opposition thereto, adopts those two

briefs as its brief in this case, adding, however, several additional citations on the issue of proximate cause as relating to losses on marine insurance policies.

The additional citations are:

Tyson vs. Union Ins. Co., 9 Fed. (2nd) 356; (D. C. N. D. Cal.);
The Santa Rita, 176 Fed. 890, (C. C. A. 9);
Aetna Ins. Co. vs. Boon, 95 U. S. 627; 24 L. Ed. 395;
Insurance Co. vs. Tweed, 17 Wall. 44, 19 L. Ed. 65;
Brady vs. Insurance Co., 11 Michigan 425.

It is respectfully submitted that the judgment of the United States Circuit Court of Appeals for the Fourth Circuit and the District Court of the United States for the District of Maryland, should be reversed and the case remanded to the District Court for trial, with costs.

Respectfully submitted,

GEORGE FORBES,
HENRY L. WORTCHE,
Attorneys for Petitioner.

Dated, Baltimore, Maryland,
October 30th, 1937.

BLANK

PAGE

BLANK

PAGE

FILE COPY

Office - Supreme Court, U. S
FILED
DEC 8 1937
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 57.

LANASA FRUIT STEAMSHIP AND IMPORTING COMPANY, INC.,

Petitioner,

vs.

UNIVERSAL INSURANCE COMPANY,

Respondent.

PETITIONER'S REPLY BRIEF.

GEORGE FORBES,
HENRY L. WORTCHE,
Counsel for Petitioner.

The Daily Record Co. Print, Baltimore.

BLANK

PAGE

TABLE OF CONTENTS.

	PAGE.
INTRODUCTORY	1
THE PLEADINGS	3
THE LAW	6
THE RIDER	15

TABLE OF CASES.

Alps, The, L. R. 1893, Prob. Div. 109	13
Bond vs. The Superb, 3 Fed. Cas. 485	8
The Corsicanna, The, 1924 A. M. C. 365; 203 N. Y. Supp. 10, affirmed 239 N. Y. 573; 147 N. E. 201	6, 8, 14, 17, 19
Cory vs. Boylston Ins. Co., 107 Mass. 140	6
Fairfield vs. Lowrey, 207 Mass. 358, 93 N. E. 598	21
Firemen's Fund Ins. Co. vs. Trojan Powder Co., 253 Fed. 305	20
Goold vs. Shaw, 1 Johns Cas. 293	9, 10, 11, 12
Inman Steamship Co. vs. Bischoff, L. R. 7 A. C. 670	13
Jordon vs. Warren Ins. Co., 1 Story 342	7
Leyland Shipping Co. vs. Norwich Union Fire Ins. Society, (1918) L. R. App. Cas. 350	13
Magoun vs. New England Fire Ins. Co., 1 Story 157	7
Mercantile Trust Co. vs. Columbus Water Works, 161 Fed. 135	21
Muller vs. Globe & Rutgers Fire Ins. Co., 246 Fed. 759	14

PAGE.

Perry vs. Cobb, 88 Maine 435 6

Pink vs. Fleming, L. R. 25 Q. B. D. 396 ..... 8, 12, 13, 14

Reischer vs. Borwick, L. R. 1894, 2 Q. B. 548 13

Taylor vs. Dunbar, L. R. 4 C. P. 206 ..... 8, 13

Tudor vs. New England Ins. Co., 12 Cush. (Mass.) 554 12

Williams vs. Smith, 2 Caines Reports 1 12

OTHER AUTHORITIES CITED.

Arnould on Marine Insurance 8

Phillips on Insurance, Sec. 1134 9

Winter on Marine Insurance, 2nd Ed. (1929), p. 97 6

The following cases cited in Brief on Behalf of Petitioner will be found on page 2 of that brief:

Aetna Ins. Co. vs. Boon, 95 U. S. 627; 24 L. Ed. 395.

Brady vs. Insurance Co., 11 Michigan 425.

Insurance Co. vs. Tweed, 17 Wall. 44, 19 L. Ed. 65.

Santa Rita, The, 176 Fed. 890.

Tyson vs. Union Ins. Co., 9 Fed. (2nd) 356.

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 57.

LANASA FRUIT STEAMSHIP AND IMPORTING COMPANY, INC.,

Petitioner,

vs.

UNIVERSAL INSURANCE COMPANY,

Respondent.

PETITIONER'S REPLY BRIEF.

INTRODUCTORY.

The Court is first referred to our brief in support of our petition for certiorari and also our *reply brief*, since these two briefs we have adopted as our main brief in this Court. The record references in those briefs are, of course, to the "Original" transcript and not to the "Print". (See Brief on Behalf of Petitioners.)

SECOND. The Court's attention is called to the persistent reference in respondent's brief to our damage as "Delay Damage", when in point of fact, it is a *stranding, or peril of the sea, damage.* It is adroit, of course, to

refer to it as "Delay Damage", for that meshes well with the English decisions on proximate cause on which they rely; whereas *stranding* damage is in accord with American decisions on proximate cause on which petitioners rely. The English cases hold proximate cause is that cause which is last in point of time—the American cases hold that proximate cause is that which is the *efficient* cause. Stranding here was the first, efficient or proximate cause and not the ensuing delay.

THIRD. It is to be noted there is persistent effort to stand with great strictness on the pleadings and shut off facts well known to respondent, although they augment their argument by erroneous and gratuitous amplifications of the factual situation to which we have had to reply.

FOURTH. At p. 4, Point I, they present as the only issue in this case a point which is *not* the issue here involved. The concrete issue is correctly stated at p. 6 of our petition for certiorari, as amplified at p. 10 in our brief in support thereof and is:

> **"Does the standard general clause of the marine cargo insurance policy here involved, insuring against losses caused by perils of the sea, cover loss of a cargo of bananas where the vessel was subjected to a maritime peril, viz.: stranding, which resulted in frustration of the venture, the rotting of the bananas and their total loss?"**

This, *the vital, actual issue in the case*, is fully discussed in that brief at p. 10 *et seq.* (q.v).

FIFTH. Emphasis ours throughout and Record references are to "Print" Record.

THE PLEADINGS.

The attempt of the respondent to confuse the issue by raising a belated point as to the sufficiency of the petitioner's declaration can hardly now be taken seriously. It was not raised in either lower court and a cursory reading of the colloquy between the District Court and Counsel at the conclusion of the hearing of petitioner's demurrer to respondent's pleas clearly shows there was no question as to the sufficiency of the petitioner's declaration (R. 22-3).

We were not offered opportunity to "enlarge and modify the Record", but offered an additional "pleading" which meant simply nothing, as the Court's order at R. p. 23 so clearly shows.

Eagerness to rest this case on the pleadings is here and everywhere apparent in their brief. They prefer to conclude the issue on the Court's interpretation of a judicially found ambiguity and shut out "all that had gone before".

The District Judge said: "I find that the ambiguity surrounding the language of the original policy permitted, in fact called for, a consideration of everything that had gone before" (R. pp. 21-22). The colloquy following shows the futility of further proof of any kind, (R. pp. 22-23).

We did not "Elect" (p. 2) to stand on the pleadings but were forced to despite the Court's finding that the case called "for a consideration of *everything* that had gone *before*".

Their brief abounds in statements unsupported by the record. Of course, bananas are a highly perishable